**REPORTED**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.253 OF 2000**

**IN**

**WRIT PETITION NO.147 OF 1995**

The Godrej and Boyce Manufacturing Company Private Limited, L.B.S. Marg, Vikhroli, Bombay - 400 079. ..Appellant.

V/s.

1. Kherulla Hasanali Pathan C/o. Association of Engineering Workers, Bella Veer Victor Chawl, Vikhroli Village, Bombay - 400 079.

2. P.H. Shah, Presiding Officer, Third Labour Court, Thane, Dist. Thane. ..Respondents.

Mr.J.P. Cama i/b. K.P. Anilkumar for appellant.

Mr.N.M. Ganguli for respondent No.1.

**CORAM : V.C.DAGA & R.S. MOHITE, JJ.**

**DATED : 22ND SEPTEMBER, 2004.**

**ORAL JUDGMENT (PER V.C. DAGA, J.)**

. This appeal is directed against the order 28th April, 2000 passed by the learned Single Judge in the Writ Petition No.147 of 1995 confirming the order dated 7/10/1994 passed by the Presiding officer, Third Labour Court, Thane in an application filed by the respondent Workman under section 33C(2) of the Industrial Disputes Act, 1947 (‘the Act’ for short) claiming wages and other benefits for the period from 2/8/1978 to 5/5/1980.

**FACTUAL BACKDROP**

2. The factual backdrop of the case reveals that the workman/respondent No.1 herein moved the Labour Court at Thane with an application filed under section 33C (2) of the Act to claim wages and D.A. being an application (IDA) No.203 of 1981 on the allegations that during the period from 2nd July, 1978 to 11th May, 1980 he was not allowed to resume his duty and that he was not paid his wages with other benefits as detailed in the application. He quantified his claim in the sum of Rs.26,601.40.

3. On being noticed, the original opponent / appellant herein; appeared and filed its written statement and raised a preliminary objection

contending that the claim set up by respondent - workman cannot be gone into in an application filed under section 33C (2) of the Act. Since his entitlement depended upon adjudication of the right for the first time, as such the Labour Court did not have jurisdiction to entertain and allow the claim of the respondent - workman.

4. The Labour Court allowed the parties to lead their evidence. By its Judgment and order dated 7/10/1994 the preliminary objection raised by the appellant to the maintainability application was overruled and the claim of the respondent/workman was quantified and allowed vide order dated 7/10/1994.

5. The above order was the subject matter of challenge before the learned Single Judge in Writ Petition No.147 of 1995. The Writ Petition came to be dismissed on merits vide order dated 28th April, 2000. This order of the learned Single Judge dated 28th April, 2000, is the subject matter of challenge in this Letters Patent Appeal.

**SUBMISSIONS**

6. Mr.J.P.Cama, learned counsel appearing for

appellant submitted that the Labour Court was in error in proceeding with the application in question as the Labour Court had no jurisdiction, in the facts and circumstances of the case, to make any order in exercise of jurisdiction under section 33C (2) of the Act. It was urged that respondent No.2 had no right or entitlement under the law to set up any claim, much less the claim set up in the application under section 33C (2) of the Act. The Labour Court, it was urged, was not competent to adjudicate the right and there upon grant relief to the workman upon such adjudication of right. The reliance was placed on the judgment of the Apex Court in the case of **Central Inland Water Transport Corporation Ltd. V/s. The Workmen and another** reported in **A.I.R. 1974 S.C. 1604**.

7. Per contra, Mr.N.M.Ganguli learned counsel appearing on behalf of the respondent/workman submitted that the claim set up by the respondent / workman was for wages and quantification thereof. He submits that in order to come within the purview of section 33C (2) of the Act, the Workman must be entitled to receive from the employer any money or benefit. In his submission, workman was very much entitled to monthly salary on the basis of his scale

of pay under the terms of employment. Monthly salary payable to the workman was a fixed sum. Employer has no right to reduce wages on the allegations that the workman did not report on duty. It was open for the management to take appropriate action if the applicant was absent from duty. Management did not take any punitive action. No enquiry was held against the workman. No overt act is done or practiced by the employee to deprive him of his wages. As such, there is absolutely no justification for the employer to deny wages due to the respondent. In his submission, section 32C (2) of the Act is the only available remedy to the workman in the facts and circumstances of this case. He thus prayed for dismissal of this appeal.

**CONSIDERATION**

8. As mentioned hereinabove, we are concerned in this appeal with the order of the Labour Court under Section 33C(2) of the Act and confirmation thereof by the learned Single Judge of this Court. That section provides as follows:-

> " Where any workman is entitled to receive from the employer any money or

> any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government."

9. Therefore, a workman in order to come within the purview of this section must be entitled to receive from the employer any money or benefit. Now, this entitlement may depend upon the adjudication of the rights or may depend upon the interpretation of certain existing rights. If this entitlement depends upon the adjudication of the rights for the first time, then, that adjudication cannot, in our opinion, come within the purview of section 33C (2) of the Act. That adjudication may also be dependent on the interpretation or construction of certain terms on which two reasonable and possible views are possible. If, on the other hand, the right is patently there but it has to be found out by reading any document,

settlement or award, that could be done within the purview of this section. Now, in this case, it is apparent from the rival contentions, which we have set out hereinabove, that the terms of employment are governed by the contract of employment. The monthly pay of the workman is pre-determined. The monthly pay of the employee/workman is his property and no employee could be deprived of his pay except in due process of law. Any diminution in the monthly pay of an workman would affect his right and interest prejudicially and no order could be made by the employer reducing the monthly salary under the contract or deduction any part therefrom without taking punitive action subject to giving the workman concerned reasonable opportunity of making representation. Thus, it is clear that the workman was entitled to monthly salary on the basis of his scale of pay under the terms of employment. The monthly salary payable to the employee was a fixed sum. Under the contract of employment, the workman was required to work during fixed working hours. Although the workman was required under the contract, to work during fixed hours, it could not be said that the workman was was paid on the basis of the number of hours of work put in by the workman in the course of any month. In the instant case, the case of the

employee/workman is that he was making himself available for his duties, but he was not allowed to work. The case sought to be put up by the appellant/employer is that the workman never offered himself for duty and, therefore, the appellant tried to press into service the principle of 'no work no wages'. Apex Court in the case of **Union of India V/s. K.V.Janikaraman [A.I.R. 1991 S.C. 2010]** held that normal rule of 'no work no pay' is not applicable to cases where the workman / employee although he is willing to work is kept away from work by authorities for no fault of his.

10. It is not in dispute that no departmental inquiry was conducted against the respondent / workman for remaining absent as alleged by the appellant/employer. It is also not in dispute that his name from the Muster Roll has not been struck off. Under these circumstances, the relationship between the respondent/workman and his employer did subsist and the relationship between them provided for payment of the monthly wages. In absence of any specific term and/or any statutory provision or departmental action, an employer has no rights to reduce the wages on the allegations that the workman did not discharge or had not performed his part of

the obligation by discharging his duty.

11. In the instant case, the management / employer had proceeded on the assumption that the workman on his own deliberately did not report on duty and, therefore, he was not entitled to claim wages. Refusal to pay or reduction of wages in such a situation is clearly a punishment. Such penal action is not permissible without holding an inquiry as it violates the principles of natural justice. There is absolutely no justification of such action. After all as said hereinabove, pay package is the property of the workman and there can be no deprivation of it, except following the due process of law. From the fact that the employer did not choose to proceed to take any departmental action against the workman is sufficient to hold that there is no impediment in the way of the workman to claim monthly wages. The workman can only be deprived of that right after availing due process of law against him. In this view of the matter, the claim set up by the workman is squarely covered by the provisions of section 33C(2) of the Act. At the cost of repetition, we reiterate that the entitlement of the workman is not in dispute. The extent of the employee’s liability, if any, can always be gone into

in the proceedings initiated under section 33C (2) of the Act. The dues of the employee/workman can always be ascertained in the said proceedings.

12. The jurisdiction of the Court has to be determined on the basis of the application made to the Court, which in the Civil jurisprudence is known as 'plaint'. The defence raised by the appellant / employer cannot oust the jurisdiction of the Court or Tribunal. When no enquiry was initiated or pending against the workman for the alleged absence from duty, certainly it will have to be presumed that the workman did not remain away from his work for his own reasons. In this case, workman was charge-sheeted, disciplinary action was taken against him but not for this period. This is thus sufficient to hold that he will be entitled to invoke the provisions of section 33C(2) of the Act for determination of the amount due to him or payable to him for the period in question. Therefore, application under section 33C(2) of the Act was clearly maintainable before the Labour Court.

13. The impugned order passed by the learned Single Judge would show that no contention in respect of the jurisdiction of the Labour Court to entertain the application under section 33C(2) of the Act was

canvassed. Had it been canvassed and not decided by the learned Single Judge, there would have been a pointed grievance in the memo of appeal in this behalf. No such grievance is to be found in the memo of appeal. The ground sought to be put in service by Mr.Cama with a view to connect it with the alleged grievance hardly proves that such contention was ever raised before the learned Single Judge. In this view of the matter, the learned Single Judge was perfectly justified in considering the question on merits ignoring the question of applicability of section 33C (2) of the Act. Mr.Cama during the course of his submission did not canvass any contention on the merits of the claim set up by the respondent / workman, the finding recorded by the Labour Court and confirmed by the learned Single Judge of this Court. The only contention raised and canvassed related to the jurisdiction of the Labour Court to entertain the application under section 33C(2) of the Act. Since we are unable to accept the submissions canvassed by Mr.Cama appearing for appellant, in our view, the appeal must fail.

12. In the result, the appeal is dismissed with costs quantified in the sum of Rs.2,500/-.

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